

**RESOLUTION NO. 74817**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ SUMMARILY VACATING A PORTION OF THE PUBLIC SERVICE EASEMENT (PSE) AND WIRE CLEARANCE EASEMENT (WCE) LYING WITHIN LOT 163 OF TRACT 3451**

**WHEREAS**, subdivision (a) of Section 8333 of the Streets and Highways Code of the State of California authorizes the City Council to summarily vacate a public service easement if the easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation; and

**WHEREAS**, the City Council intends to summarily vacate a portion of the Public Service Easement and Wire Clearance Easement (hereinafter the "Easement") constituting all that real property situated in the City of San José, County of Santa Clara, State of California, more particularly described as:

The 5 foot wide Wire Clearance Easement and the 10 foot wide Public Service Easements to be abandoned are located within a portion of Lot 163 as said lot is shown upon that certain map entitled "Tract 3451 San José Highlands Unit No. 4" as said tract was recorded in Book 165 of Maps at pages 52 and 53, Santa Clara County Records, said easements are located in the City of San José, County of Santa Clara, State of California, and are described as follows:

That portion of the said 5 foot wide Wire Clearance Easement and that portion of said 10 foot wide Public Service Easement that cross a portion of said Lot 163 and lie within that property described in Parcel One of that Grant Deed recorded in Document No. 19876351, Santa Clara County Records.

**WHEREAS**, on January 27, 2009, the Director of the Department of Public Works approved that certain map entitled "PLAT MAP SHOWING A 10 FOOT WIDE PUBLIC SERVICE EASEMENT (PSE) AND 5 FOOT WIDE WIRE CLEARANCE EASEMENT (WCE) TO BE VACATED" showing the portion of the Easement that the City Council intends to summarily vacate (hereinafter "Map"); and

**WHEREAS**, attached to this Resolution as Exhibit "A" is a copy of the report, dated February 17, 2009, that the Director of the Department of Public Works submitted to the City Council setting forth the reasons justifying the summary vacation of the Easement (hereinafter "Report").

**NOW, THEREFORE,** BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ THAT:

**SECTION 1.** The City Council hereby adopts the Report and, based upon the Report and all other evidence submitted, makes the following findings:

1. The Easement has not been used for the purpose for which it was originally acquired for five consecutive years immediately preceding the proposed vacation; and
2. No public facilities are located within the Easement that would be affected by a summary vacation; and
3. This portion of the Easement is not needed for present or prospective easement purposes; and
4. The public convenience and necessity does not require reservation of any portion of the Easement.

**SECTION 2.** Based upon the findings made in Section 1 of this Resolution and the provisions of Section 8333 of the Streets and Highways Code, the City Council does hereby order that the subject portion of the Easement shall be and hereby is summarily vacated.

**SECTION 3.** The City Clerk is hereby directed to record at Santa Clara County Records this Resolution, including Exhibit “A” hereto, and the Map.

**SECTION 4.** The subject portion of the Easement will no longer constitute a Public Service Easement and Wire Clearance Easement from and after the date of recordation of the documents identified in Section 3 of this Resolution.

ADOPTED this 10th day of March, 2009, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,  
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CHIRCO.

DISQUALIFIED: NONE.

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk